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KELLAM *v.* BELOTE.

March 21, 1918.

[95 S. E. 453.]

1. **Landlord and Tenant (§ 116 (5)*)—Tenancy from Year to Year—Notice to Terminate.**—Where there was no unconditional notice to vacate given a tenant from year to year, but the notice merely proposed a different kind of rent, a renting for part of the crops, instead of a fixed money rent, to which proposition the tenant replied he would do what was right, there was not sufficient notice to terminate the tenancy.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 188.]

2. **Landlord and Tenant (§ 116 (7)*)—Notice to Terminate Tenancy—Waiver.**—Where the landlord of a tenant from year to year gave notice to the tenant to stop drinking whisky and go ahead as he had been doing, the landlord waived the notice to vacate previously given.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 190.]

3. **Trial (§ 156 (3)*)—Demurrer to Evidence—Admission.**—Demurrer to the evidence admits the truth of the testimony of a witness for the adverse party.

Error to Circuit Court, Accomac County.

Action by Lucius J. Kellam against William H. Belote. To review a judgment for defendant, plaintiff brings error. Affirmed.

S. J. Turlington, of Accomac, *Jeffries & Jeffries*, of Norfolk, and *Geo. L. Doughty, Jr.*, of Accomac, for plaintiff in error.

Mapp & Mapp, of Accomac, for defendant in error.

MORRISETTE *v.* COOK & BERNHEIMER CO. et al.

March 21, 1918.

[95 S. E. 449.]

1. **Fraudulent Conveyances (§ 278 (2)*)—Husband and Wife—Presumptions.**—Conveyances by a husband to his wife while indebted are as a matter of public policy presumed fraudulent.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 581.]

2. **Fraudulent Conveyances (§ 278 (2)*)—Husband and Wife—Proof.**—Where a husband who is indebted conveys his property to his wife, the wife must prove the good faith of the transaction by clear and satisfactory evidence.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 581.]

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Fraudulent Conveyances (§ 104 (2)*)—Husband and Wife—Validity.—If a deed by a husband to his wife while indebted be tainted with actual fraud, it is void as to both existing and subsequent creditors.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 577.]

4. Fraudulent Conveyances (§ 278 (2)*)—Husband and Wife—Postnuptial Settlements.—When postnuptial settlement are assailed by creditors, they must be upheld by proof.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 581.]

5. Fraudulent Conveyances (§ 280 (3)*)—Postnuptial Settlements—Evidence.—Where a postnuptial settlement is assailed by creditors, the answer of the wife is not evidence, but must be sustained by proper proof.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 584.]

6. Fraudulent Conveyances (§ 278 (2)*)—Attack—Burden of Proof.—Code 1904, § 2457, provides that every gift, conveyance, assignment, transfer, or charge, which is not upon consideration deemed valuable in law, shall be void as to creditors whose debts shall have been contracted at the time it was made, but shall not on that account merely be void as to subsequent creditors. Section 2458 provides that every gift, conveyance, assignment, or transfer given with intent to delay, hinder or defraud creditors, purchasers, or other persons shall be void. A husband while indebted conveyed all his property, amounting to more than his debts, to his wife, and subsequently incurred further indebtedness. The conveyance recited the consideration to be \$5 in hand paid and other valuable considerations. When the conveyance was attacked as being in fraud of creditors, the wife admitted that the recital of the consideration was false, and that the conveyance was in fact voluntary, but claimed that it was not void as to subsequent creditors. Held, that the burden was upon her to repel the presumption of fraud arising out of the admission, and such admission did not, by establishing that the conveyance was voluntary merely, shift the burden of proof to the creditors.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 581.]

7. Fraudulent Conveyances (§ 104 (2)*)—Conveyances by Husband and Wife—Subsequent Creditors.—Where a conveyance by a husband to his wife, while indebted, is admitted by her to be voluntary, and that the recital of a valuable consideration was false, such admission constitutes a badge of fraud, which is an additional circumstance to that of the mere voluntary nature of the conveyance, sufficient to sustain a decree that the conveyance was fraudulent as to subsequent creditors under Code 1904, § 2458, providing that conveyance in fraud of creditors shall be void.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 577, 584.]

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

8. Appeal and Error (§ 1032 (1)*)—Review—Reversal.—An appellate court will not reverse the decree of a trial court, unless satisfied that it is wrong; the burden being upon the party complaining to show error.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 581, 582.]

Appeal from Circuit Court of City of Norfolk.

Suit by the Cook & Bernheimer Company and others against Alvilla Morrisette. Judgment for complainants, and defendant appeals. Affirmed.

N. T. Green and *Thos. H. Willcox, Jr.*, both of Norfolk, for appellant.

G. M. Dillard and *Alfred Anderson*, both of Norfolk, for appellees.

CHESAPEAKE & O. RY. CO. OF INDIANA NATIONAL BANK
OF COMMERCE OF NORFOLK.

March 21, 1918.

[95 S. E. 454.]

1. Carriers (§ 108*)—Carriage of Freight—Contracts.—In every case of an action for damages for breach of contract or breach of duty by a common carrier of freight to carry it safely, whether in assumpsit on the contract, or in tort for breach of duty, the right of action is dependent on the existence of a contract of carriage between plaintiff and the carrier when the alleged cause of action arose, which contract need not have been express, but may have arisen from the duty imposed at common law or by statute, state or federal, in which case the contract will be implied in law from the duty.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 678.]

2. Commerce (§ 8 (12)*)—Carriage of Freight—Interstate Shipment—Interstate Commerce Act.—Congress having occupied the whole field of interstate commerce by virtue of the Interstate Commerce Act and its amendments, such statutes have superseded all state legislation on the subject, and they and their construction alone must be looked to in ascertaining the rights of the parties litigant in all actions involving an interstate shipment.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 877.]

3. Carriers (§ 177 (4)*)—Carriage of Freight—Liability of Initial Carrier—Subsequent Contract—Interstate Commerce Act.—Under the Interstate Commerce Act (Act Feb. 4, 1887, c. 104, 24 Stat. 379), as amended by the Carmack Amendment (Act June 29, 1906, c. 3591,

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.